

FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEES

IDENTIFIED IN BLOCK 11.F., BELOW.

2. AUTHORITY-STATUTES

16 U.S.C. 1539(a)(1)(A)

16 U.S.C. 703-712

REGULATIONS (Attached)

50 C.F.R. §§ 13 & 17

3. NUMBER

TE-070113-0

4. RENEWABLE

☒ YES

☐ NO

5. MAY COPY

☒ YES

☐ NO

6. EFFECTIVE

12/5/2003

7. EXPIRES

12/5/2033

8. NAME AND TITLE OF PRINCIPAL OFFICER (if # 1 is a business)

9. TYPE OF PERMIT

ENDANGERED SPECIES - ENHANCEMENT OF SURVIVAL

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

SEE BLOCK 11.E., BELOW.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 C.F.R. §§ 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN **BLOCK #2 ABOVE**, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEES NAMED IN **BLOCK 11.F**, AND AUTHORIZED AGENTS AS SET FORTH IN 50 CFR §§ 13.24 & 13.25.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEES AND ANY AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 11 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS.

XX BLOCK 11 OF THIS PERMIT CONSISTS OF ITEMS A - R (6 PAGES TOTAL).

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS 11.Q AND 11.R OF THIS PERMIT.

ISSUED BY

TITLE

DATE

DEPUTY REGIONAL DIRECTOR, FWS,
SOUTHEAST REGION

ORIGINAL

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- E. The Permit Area envelopes all the “Covered Properties” depicted and described in the approved Chewacla Creek Safe Harbor Agreement (“SHA”), identified by Agreement and/or Tracking Number TE-070113-0. Within the Permit Area, activities authorized by this Permit include all actions prescribed by and associated with the implementation of the Permittees’ SHA, which is incorporated by reference herein and is identified as Attachment 1 of this Permit.
- F. For purposes of implementation of the terms and conditions of this Permit and the SHA, the following landowners and cooperators are collectively and individually considered Permittees:
1. Martin Marietta Materials, Inc., Mr. David Barkley, Martin Marietta Aggregates, Shorter Sand and Gravel Plant, P.O. Box 339, Shorter, Alabama, 36075. Phone: 334/727-6662.
 2. Alabama Department of Conservation and Natural Resources, M. Barnett Lawley, Commissioner, 64 North Union Street, Room 474, Montgomery, Alabama, 36130. Phone: 334/242-3486.
 3. Bob and Fannie Harris, LLC, Dr. Charles Harris, 13908 Turnmore Road, Silver Spring, Maryland, 20906. Phone: 301/460-0285.
 4. John W. Pace III, Betty M. Pace, 4955 Carmel Drive, North Mobile, Alabama, 36608. Phone: 251/344-8408.
 5. Phillips Family Partnership, Ltd., Elaine P. Espy, 1458 South Donahue Drive, Auburn, Alabama, 36832, Phone: 334/502-0310.
 6. Water Works Board of the City of Auburn, Alabama, Rex B. Griffin, Jr., Manager, 114 No. Donahue Drive, Auburn, Alabama, 36830. Phone: 334/887-4911 ext. 224.
 7. The City of Auburn, Alabama, Doug Watson, City Manager, 144 Tichenor Avenue, Auburn, Alabama, 36830. Phone: 334/501-7260.
- G. Each Permittee is authorized to incidentally take all fine-lined pocketbook (*Lampsilis altilis*), southern clubshell (*Pleurobema decisum*) and ovate clubshell (*Pleurobema perovatum*) – collectively known as the “covered species” – and all covered species habitat located on the lands identified in Block 10 subject to the following conditions:
1. The agreed upon habitat improvements for the covered species specified in the SHA have been carried out.
 2. The affected Permittee(s) provides the U.S. Fish and Wildlife Service with a notarized certified statement that any incidental take is of individuals or habitat of the covered species that are above the baseline established in the SHA.
 3. Permittee(s) agree to maintain their respective baseline responsibilities as described in the SHA.

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G. (CONTINUED)

4. The Permittees shall make reasonable efforts to give the U.S. Fish and Wildlife Service a sixty (60)-day notice, provided, however, not less than thirty (30) days notice shall be given, of any expected incidental take of the covered species. Such notification will provide the U.S. Fish and Wildlife Service with an opportunity to translocate any affected covered species to other properties or other areas owned or otherwise controlled within the enrolled properties, with the Permittee's consent, if possible and appropriate.
5. With reasonable advance notice, each Permittee shall allow the U.S. Fish and Wildlife Service, or its designated representative(s), to enter the properties identified in the SHA at reasonable hours and times for the general purposes as specified in 50 CFR §§ 13.21(e)(2), including, but not limited to, ascertaining the status of the covered species, covered species habitat conditions, and/or compliance inspections and monitoring pursuant to the Permit and SHA.
6. The Permittee shall notify the U.S. Fish and Wildlife Service of any transfer of lands subject to the SHA and this Permit.
7. All authorized incidental take will result only from those actions and activities described in the SHA and as authorized via this permit.

H. The Permittees and the U.S. Fish and Wildlife Service agree that modifications and amendments to the SHA and this Permit may occur. The Permit is based upon the Permittees' expected compliance with the terms and conditions identified herein and those identified in the SHA. Where a conflict occurs between the SHA and this Permit, the Permit shall control. The U.S. Fish and Wildlife Service shall retain sole discretion on decisions pertaining to modifications and/or amendments to this permit. The following procedures shall govern the modification and amendment process:

1. Either a Permittee or the U.S. Fish and Wildlife Service may propose modifications and/or amendments to the SHA or Permit by providing written notice to all other parties signatory to the SHA. Such notice shall include a statement of the reason for the proposed modification and/or amendment and a discussion of any anticipated environmental effects, including its effects on the operations of the SHA and on the covered species. If the U.S. Fish and Wildlife Service determines that an analysis of environmental effects is required, such analysis shall be conducted by the U.S. Fish and Wildlife Service offices in Conditions 11.Q and 11.R., with the cooperation of the Permittee(s) requesting the modification and/or amendment. The Permittees and the U.S. Fish and Wildlife Service will respond to a proposed modification or amendment within sixty (60) days of the notice. Absent any objection from any party, the proposed modification and/or amendment will be determined as minor and shall become effective upon written approval by the other parties. In the event of an objection by any party, the objecting party shall notify, in writing, the other parties. Said notification shall include the specific nature of the objection, the reasoning behind the objection, and alternative resolutions to the issue being disputed.
2. If it determines that a modification or amendment will result in operations of the SHA or Permit that are substantially different from those analyzed in connection with the original SHA and Permit, the U.S. Fish and Wildlife Service will not propose or approve that modification or amendment to the SHA or Permit prior to complying with the procedural requirements of Federal laws and regulations as outlined in Condition H.3.

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H. (CONTINUED)

3. Any amendment or modification shall conform with all applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the U.S. Fish and Wildlife Service's regulations codified at 50 C.F.R. Parts §§ 13 and 17.
 4. A Permittee can request termination of its participation in the Permit and SHA at its sole and absolute discretion. In the event a Permittee elects to terminate its participation in the SHA and inclusion as a Permittee before the end of the Permit's thirty (30) year duration, the Permittee agrees to provide the U.S. Fish and Wildlife Service with thirty (30) days advance written notice. The explicit inclusion of the affected Permittee and the its participation as a signatory to the SHA shall be deemed void and canceled upon its receipt by the U.S. Fish and Wildlife Service office in Condition 11.Q. A Permittee's termination shall not affect the responsibilities, protections, and assurances of other Permittees as set forth in the SHA and the Permit.
- I. The Permittees shall provide funding necessary for the implementation of the SHA and this Permit through the Permit's expiration date or other termination as provided in the SHA. By accepting this Permit, the Permittees responsible for funding under the SHA warrant that they have and will expend such funds as necessary to fulfill the SHA and Permit obligations. The Permittees responsible for funding under the SHA will promptly notify the U.S. Fish and Wildlife Service offices in Conditions 11.Q and 11.R. in writing of any change in their ability to fulfill these obligations.
- J. Neither this Permit nor the SHA authorizes the incidental take of any other federally listed plant and/or animal species. In the event other listed plant and/or animal species are likely to be adversely affected by a Permittee's actions associated with the SHA and this Permit, the Permittee will meet with the U.S. Fish and Wildlife Service and develop appropriate management or other measures that will preclude any unauthorized adverse effects. If activities proposed by the Permittee will unavoidably result in adverse affects to species not covered by this Permit, the Permittee can amend this Permit by the procedures outlined in Condition 11.H. or seek any other available remedies to such situations.
- K. Upon locating a dead, injured, or sick covered species, or other species that may be covered by the Permit in the future, a Permittee will notify the U.S. Fish and Wildlife Service Law Enforcement Office in Daphne, Alabama (Phone: 251/441-5787; Facsimile:251/441-5789). Notification shall also be made within three (3) work days of the discovery to the U.S. Fish and Wildlife Service office identified in Condition 11.Q. If further authorized by the U.S. Fish and Wildlife Service Law Enforcement Office identified in Condition 11.K., in Daphne, Alabama, the Permittee may carefully and humanely handle sick, injured, or dead specimens to ensure effective treatment of live individuals or to preserve biological materials of deceased individuals for later analysis. In conjunction with the care of sick or injured individuals or preservation of biological materials from a dead animal, the Permittees shall endeavor to ensure that the site where a dead, sick, or injured specimen is obtained is not unnecessarily disturbed.
- L. The Permittees are responsible for ensuring that all personnel who conduct the activities contemplated by the SHA and this Permit are either separately authorized by the U.S. Fish and Wildlife Service to conduct the activities by holding a valid section 10(a)(1)(A) Scientific Collection or Recovery permit and, if required, a similar state permit; or that all personnel are working under the direct supervision of the Permittees and are provided a copy of the Permit, and, if necessary, a similar state permit.

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- M. The Water Board (Permittee identified in 11.F.6 above), as provided in Section 4.3 of the SHA, shall provide an annual report to the U.S. Fish and Wildlife Service offices identified in Condition 11.Q and 11.R and the Permittees will meet as often as necessary with the U.S. Fish and Wildlife Service to review the information contained in the annual report. All meetings will provide an opportunity for resolutions of disputes regarding Permit and/or SHA implementation and to discuss amendments or modifications to this Permit and SHA. All meetings will be mutually-agreed upon, as will a list of potential attendees and potential discussion topics. Each Permittee will be notified of all such meetings and given the opportunity to be present in person or by representative.
- N. Beginning in 2004 and for the duration of this Permit, the Permittees, through the Water Board as provided in Section 4.3 of the SHA, shall submit an annual report by December 31st to the USFWS Offices in Conditions 11.Q and 11.R, that contains the following:
1. The following signed and dated certification from a responsible official who supervised or directed the preparation of the report:

“Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.”
 2. The information set forth in Section 4.3. of the SHA.
 3. An identification of any material non-compliance of the Permit and all measures employed to remediate such non-compliance.
 4. An accurate map depicting all portions of the enrolled properties that have baseline responsibilities identified in the SHA, noting any changes, additions, deletions, or other modifications made to the portions of the Permit Area affected by implementation of this Permit and SHA.
- O. The U.S. Fish and Wildlife Service agrees to maintain the confidentiality of any information or data submitted by or on behalf of Permittees in the annual report required by Condition 11.N. In addition, the U.S. Fish and Wildlife Service agrees to maintain the confidentiality of any information or data submitted by or on behalf of the Permittees pursuant to this Permit which the Permittees have designated as proprietary, commercially or financially sensitive, or confidential, to the maximum extent allowed by law. The U.S. Fish and Wildlife Service shall provide written notice to the Permittees upon receiving a request by any other agency or party for such information or data or a record including such information or data. In the event that the U.S. Fish and Wildlife Service determines that it may be required to disclose the information or data to the requesting agency or other party, it shall provide to the Permittees written notice thereof a minimum of twenty-one (21) working days prior to the anticipated date of disclosure, to allow the Permittees to object and to take appropriate action to seek to prevent the disclosure or assure that the requesting party will likewise maintain the confidentiality of the information or data with respect to further disclosure.

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- P. If additional conservation and mitigation measures are deemed necessary, the U.S. Fish and Wildlife Service may require additional measures of a Permittee, but only if such measures are limited to modifications within the enrolled properties and maintain the original terms of the Permit and SHA to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of the land, water, or other natural resources otherwise available for development or use under the original terms of the SHA without the consent of the Permittee. These assurances apply only to the Permittees' SHA where the SHA is being properly implemented, and apply only with respect to the covered species identified in the SHA and this Permit.
- Q. For purposes of monitoring compliance and administration of the terms and conditions of this Permit, the contact office of the U.S. Fish and Wildlife Service is: Field Supervisor, U.S. Fish and Wildlife Service, P.O. Drawer 1190, Daphne, Alabama 32405. Telephone: (334) 441-5181. Facsimile: (334) 441-6222.
- R. Copies of reports and any other documentation submitted in response to the operation and management of this Permit shall also be provided to: Endangered and Threatened Species Permits, U.S. Fish and Wildlife Service (AES/TE/P), 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. Phone: (404) 679-4124. Facsimile: (404) 679-7081.

END

FILENAME: permit.final.wpd